

MEMO

To: Residents of Liberty, Maine

From: Richard L. King

Date: February 11, 2016

Regarding: Proposed town ordinance titled:

“LOCAL FOOD AND COMMUNITY SELF-GOVERNANCE ORDINANCE (LFCSGO)”

Fellow residents of Liberty,

Among the many items we will be considering at this year’s Town Meeting is my proposed ordinance addressing the subject of our home rule right to food of our own choice. I am sure that there are, and will be, questions about this ordinance. I have created a Facebook page (**Food Sovereignty for All of Maine**) where you can find various posts relevant to the subject.

In addition, I will be hosting three informational meetings in the Overlock Room at Town Hall. They are scheduled for:

Thursday, February 18th at 7:00 PM,
Saturday, February 27th at 10:00 AM, and
Saturday, March 12th at 10:00 AM

I look forward to seeing you and to answering any questions you might have. Attached is a copy of the ordinance as it will appear in the town meeting warrant, as well as list of some of the questions I anticipate. If you cannot attend a meeting, feel free to contact me with your questions. My email is richard@goatspiritfarm.com and my telephone is 589-3044.



LOCAL FOOD AND COMMUNITY SELF-GOVERNANCE ORDINANCE (LFCSGO)

SECTION 1. NAME. This Ordinance shall be known as, and may be cited as, the “Local Food and Community Self-Governance Ordinance.”

SECTION 2. DEFINITIONS. As used in this ordinance:

1. **LOCAL FOOD.** “Local Food” means any food, food product, or drink that is grown, produced, or processed by Producers or Processors, as herein defined, who sell directly to their Patrons through farm- or home-based sales or buying clubs, at roadside stands, fundraisers, or at community social events.
2. **PRODUCER.** “Producer” means any farmer or gardener who grows any plant for food or drink or raises any animal for food or drink.
3. **PROCESSOR.** “Processor” means any individual who processes or prepares local food in a private home kitchen.
4. **PATRON.** “Patron” means, with regard to a local foods, the last person who:
 - a. Purchases for home consumption or consumes the local food;
 - b. Does not resell the local food; and
 - c. Has been informed that the local food was produced in an uninspected, unlicensed establishment and that the local food has not been inspected.
5. **COMMUNITY SOCIAL EVENT.** “Community social event” means an event where people gather as part of a community for the benefit of those gathering or for the community, including but not limited to a church or religious social, school event, potluck, neighborhood gathering, library meeting, traveling food sale, fundraiser, craft fair, and other public event.
6. **FOODWAYS.** “Foodways” are the cultural, social, and economic practices relating to the production and consumption of food.
7. **HOME CONSUMPTION.** “Home consumption” means consumed within a private home.

SECTION 3. PREAMBLE AND PURPOSE. We the People of the Town of Liberty, County of Waldo, Maine have the right to produce, process, sell, purchase, and consume local foods, thus promoting self-reliance, the preservation of family farms, ecologically sound farming practices, and local food traditions. We recognize that environmentally sustainable family farms, and local food processing by individuals and families offer stability to our rural way of life by enhancing the economic, environmental, and social wealth of our community. As such, our right to a local food system requires us to assert our inherent right to self-government. We recognize the authority to protect that right as belonging to the Town of Liberty.

We have faith in our citizens’ ability to educate themselves and make informed decisions. We hold that federal and state regulations impede local food production and constitute a usurpation of our citizens’ right to foods of their choice. We support wholesome food that nourishes individuals and the community, sustains producers and processors, and respects the environment. We are therefore duty bound under the Constitution of the State of Maine to protect and promote unimpeded access to local foods.

The purpose of the Local Food and Community Self-Governance Ordinance is to:

1. Provide citizens with unimpeded access to local food;
2. Enhance the local economy by promoting the purchase of farm food products and homemade food;
3. Protect access to farm-based sales and direct producer/processor to patron sales;
4. Support the economic viability of producers and processors;

5. Preserve community social events where local foods are served or sold; and
6. Preserve local knowledge and traditional foodways.

SECTION 4. AUTHORITY. This Ordinance is adopted and enacted pursuant to the inherent, inalienable, and fundamental right of the citizens of the Town of Liberty to self-government, and under the authority recognized as belonging to the people of the Town by all relevant state and federal laws including, but not limited to the following:

THE DECLARATION OF INDEPENDENCE OF THE UNITED STATES OF AMERICA, which declares that governments are instituted to secure peoples' rights, and that government derives its just powers from the consent of the governed.

THE CONSTITUTION OF THE STATE OF MAINE, ARTICLE I, SECTION 2, which declares: "All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit; they have therefore an unalienable and indefeasible right to institute government, and to alter, reform, or totally change the same, when their safety and happiness require it."

MAINE REVISED STATUTES, TITLE 7, SECTION 1-A, which states: "The survival of the family farm is of special concern to the people of the State, and the ability of the family farm to prosper, while producing an abundance of high quality food and fiber, deserves a place of high priority in the determination of public policy."

MAINE REVISED STATUTES, TITLE 7-A, SECTION 201-A, which states that it is the policy of this State to encourage food self-sufficiency for its citizens. The Department Of Agriculture, Conservation And Forestry shall support policies that:

1. Through local control, preserve the ability of communities to produce, process, sell, purchase and consume locally produced foods;
2. Ensure the preservation of family farms and traditional foodways through small-scale farming and food production;
3. Improve the health and well-being of citizens of this State by reducing hunger and increasing food security through improved access to wholesome, nutritious foods by supporting family farms and encouraging sustainable farming and fishing;
4. Promote self-reliance and personal responsibility by ensuring the ability of individuals, families and other entities to prepare, process, advertise and sell foods directly to patrons intended solely for consumption by the patrons or their families; and
5. Enhance rural economic development and the environmental and social wealth of rural communities.

MAINE REVISED STATUTES, TITLE 30-A, SECTION 3001, which says that municipalities may enact ordinances to protect the welfare of their inhabitants and that there is a rebuttable presumption that any ordinance enacted under this section is a valid exercise of a municipality's home rule authority.

SECTION 5.1. LICENSURE/INSPECTION. Producers and processors in the Town of Liberty are not subject to licensure or inspection provided:

- a) Transactions are only between producers or processors and patrons. This includes sales that: 1) are made directly to a patron and 2) occur on the farm where the farm food product originated, at the home where the homemade food was produced, or at the home of the Patron.
- b) Products are prepared for, consumed, or sold at a community social event.
- c) Patrons understand that the product is not manufactured under license from or inspected by any governmental agency.

SECTION 5.2. RIGHT TO ACCESS AND PRODUCE FOOD. The Citizens of the Town of Liberty possess the right to save and exchange seed and to produce, process, sell, purchase, and consume local food of their choosing.

SECTION 5.3. RIGHT TO SELF-GOVERNANCE. The Citizens of the Town of Liberty possess the right to a form of governance that recognizes that all power is inherent in the people and that all free governments are founded on the people's authority and consent.

SECTION 5.4. RIGHT TO ENFORCE. The Citizens of the Town of Liberty possess the right to adopt measures which prevent the violation of the rights enumerated in this Ordinance.

SECTION 6. STATEMENT OF LAW, IMPLEMENTATION. The following restrictions and provisions serve to implement the preceding statements of law.

- 1) State and Federal Law. It shall be unlawful for any law or regulation adopted by the state or federal government to interfere with the rights recognized by this Ordinance. It shall be unlawful for any corporation to interfere with the rights recognized by this Ordinance. The term "corporation" shall mean any business entity organized under the laws of any state or country.
- 2) Patron Liability Protection. Patrons purchasing food for home consumption may enter into private agreements with those producers or processors of local foods to waive any liability for the consumption of that food.

SECTION 7. CIVIL ENFORCEMENT. The Town of Liberty may enforce the provisions of this Ordinance through seeking equitable relief from a court of competent jurisdiction. Any individual citizen of the Town of Liberty shall have standing to vindicate any rights secured by this ordinance which have been violated or which are threatened with violation, and may seek relief both in the form of injunctive and compensatory relief from a court of competent jurisdiction.

SECTION 8. TOWN ACTION AGAINST PREEMPTION. The foundation for making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and the pursuit of happiness. Any attempt to use other units and levels of government to preempt, amend, alter, or overturn this Ordinance or parts of this Ordinance shall require the Town to hold public meetings that explore the adoption of other measures that expand local control and the ability of citizens to protect their fundamental and inalienable right to self-government.

SECTION 9. EFFECT. This Ordinance shall be effective immediately upon its enactment.

SECTION 10. SEVERABILITY CLAUSE. To the extent any provision of this Ordinance is deemed invalid by a court of competent jurisdiction, such provision will be removed from the Ordinance, and the balance of the Ordinance shall remain valid.

SECTION 11. REPEALER. All inconsistent provisions of prior ordinances adopted by the Town of Liberty are hereby repealed, but only to the extent necessary to remedy the inconsistency.

SECTION 12. HUMAN RIGHTS AND CONSTITUTIONALITY. Nothing in this ordinance shall be construed as authorizing any activities or actions that violate human rights protected by the U.S. Constitution or the Constitution of the State of Maine.

LOCAL FOOD AND COMMUNITY SELF-GOVERNANCE ORDINANCE (LFCSGO)

Frequently Asked Questions

1) What is Food Sovereignty?

- In 2007, more than 500 representatives from more than 80 countries and from all walks of life gathered together in the village of Nyéléni in Sélingué, Mali to strengthen a global movement for food sovereignty. The following is an excerpt of a statement they made regarding the meaning of food sovereignty:

“Food sovereignty is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. It puts the aspirations and needs of those who produce, distribute, and consume food at the heart of food systems and policies rather than the demands of markets and corporations.”

- Food Sovereignty is about our right:
 - to healthy local food of our choice without regulation and control of government;
 - to choose food without pasteurization, sterilization, homogenization, or irradiation, all of which alter food’s vitality;
 - to choose non-GMO and pesticide-free food;
 - to choose food from humanely and naturally raised animals; and
 - to be responsible for our choice and consumption of those foods.

2) How many towns have this ordinance?

- At this time there are 16 towns with the ordinance.

3) What does the LFCSGO actually do?

- The intent of the LFCSGO is to remove face-to-face sales of local food from governmental licensure, inspection, and labeling requirements.

4) Is it legal? Won’t it be preempted by state and federal law?

- Maine has strong home rule laws and an ordinance is law until a court says otherwise.
- It is fair to say that the matter of preemption is not completely resolved. There are many forces and interests involved that remain at odds. While the Commissioner of the Department of Agriculture, in 2011, wrote letters to first towns that adopted the Ordinance refusing to recognize the ordinance, no formal steps have been taken by the state’s attorney general to legally challenge the towns that have passed the LFCSGO and no further letters have been received.

- At this writing, the strength of the ordinance relies on the courage and conviction of citizens (and select boards) to adopt the ordinance, which will add to the strength of our voice, increasing pressure on the legislature to recognize the will of the people by passing a food freedom act for Maine.

5) Why not just address this at the state level?

- Maine’s statutes, Title 7-A, §201-A, titled “**Local food and rural economic development**” states the following:

It is the policy of this State to encourage food self-sufficiency for its citizens. The department shall support policies that:

1. **Local control.** *Through local control preserve the ability of communities to produce, process, sell, purchase and consume locally produced foods;*
2. **Small-scale farming and food production.** *Ensure the preservation of family farms and traditional foodways through small-scale farming and food production;*
3. **Improved health and well-being.** *Improve the health and well-being of citizens of this State by reducing hunger and increasing food security through improved access to wholesome, nutritious foods by supporting family farms and encouraging sustainable farming and fishing;*
4. **Self-reliance and personal responsibility.** *Promote self-reliance and personal responsibility by ensuring the ability of individuals, families and other entities to prepare, process, advertise, and sell foods directly to customers intended solely for consumption by the customers or their families; and*
5. **Rural economic development.** *Enhance rural economic development and the environmental and social wealth of rural communities.*

Driven by Federal pressure (and money), big agribusiness interests (lobbying), and the retail grocery industry (lobbying), the rules and regulations promulgated by the Department favor large farming operations.

- The higher we go in the legislative system, the less access we have to the process. The democratic channels of policy and lawmaking are clogged with corporate dollars and influence. The letter that follows was published July 2, 2015 by Penobscot Bay Press in *The Weekly Packet* and was written by Rep. Ralph Chapman (Brooksville). Rep. Chapman sponsored LD925, which would have, in essence, made the provisions of local food ordinances the law statewide.

“Small Farms or Concealed Guns

Eighty percent of bills filed in the state legislature end up going nowhere. Some are stopped at the committee level, some by the House or Senate, some by the Appropriations Committee, and some are stopped by the Governor. Unfortunately, citizens have little control over the process once committee hearings are over. Indeed, corporate opponents of bills sometimes skip the public hearings knowing that they can prevail further down the line to block popular legislation.

Two recent cases illustrate how the system works: a bill to promote small diversified farms by reducing regulation of direct farmer to consumer sales, and a bill to de-regulate concealed weapons. Both made it through the legislative process to the Appropriations Table, the place where bills with fiscal notes are stopped unless they are of sufficiently high priority to consume the meager funds available after the budgeting process.

The bill promoting small diversified farms (LD925) had no opposition at the public hearing, received a unanimous Ought To Pass recommendation from the Committee of jurisdiction, received unanimous passage in the House and Senate, received unanimous enactment in the House and went to the Appropriations Table

because it was determined that revenues would be reduced by \$22,800 per year from permit fees that would no longer be required. [And in fact are not even collected at all.]

The bill de-regulating concealed weapons (LD652) had massive opposition (and support) at the public hearing, received a divided report (7 against to 6 in favor) from the Committee of jurisdiction, received a split vote in the Senate (21 - 14) and a split vote in the House (83 - 62) on passage, another split vote in the Senate (23 - 12) and in the House (87 - 60) on enactment and went to the Appropriations Table because it was determined that revenues would be reduced by \$274,000 per year from permit fees that would no longer be required.

The Appropriations Committee voted to deny funding of the small diversified farms bill and to allow (the ten times larger) funding of the concealed weapons bill.

The lobbyist working for the Maine Grocers and Food Producers Association (paid \$3,000 per month) was talking to Appropriations Committee members during the two days before their vote. The US Food and Drug Administration (FDA) wrote a letter to every member of the state Legislature recommending defeat of the small farm bill because of the health threat posed by unpasteurized milk products. Curiously, the FDA letter provided information showing an average of one death in the US every seven years from unpasteurized dairy. There were twice as many deaths per year in New England from pasteurized milk. (There are twenty to thirty deaths per year in the US from lightning, a risk 200 times greater than unpasteurized dairy.)

As Appropriations was making their choices, citizens of the fifteenth town in Maine voted (unanimously) to enact a local ordinance that reduces the regulation of direct farmer to consumer sales.

Apparently citizens can lead at the local level, whereas the legislature follows corporate interests at the state level."

- The adoption of LFCSGOs by individual towns is the beginning of a systemic change to Maine's food laws, and as we change the system it will come to a place where the law supports small, local farms, and traditional foodways—in accordance with Title 7-A, §201-A.
- As of this writing, the legislature is considering an amendment to the Constitution of the State of Maine that will guarantee our right to the food of our choice. Although not yet official, the amendment reads:

Section 25. Right to food freedom; food self-sufficiency; bodily health and well-being. *All individuals have a natural, inherent and unalienable right to acquire, produce, process, prepare, preserve and consume the food of their own choosing, for their own nourishment and sustenance, by hunting, gathering, foraging, farming, fishing, gardening or saving and exchanging seeds, provided that no individual commits trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the acquisition of food; furthermore, all individuals have a right to barter, trade or purchase food from the sources of their own choosing, for their own bodily health and well-being; and every individual is fully responsible for the exercise of these rights, which may not be infringed.*

6) Why not just get a license—they aren't expensive?

- The cost of a license is low, but in order to be licensed, one must have approved facilities. For small farms and local food producers, the cost of such facilities can be quite substantial and may not be justified for such a non-retail situation. Rules that apply to large-scale operations often make no sense on a small, diversified farm.
- Licensing requires conformance to all regulations for products considered to be "potentially hazardous foods" (e.g. raw milk products, shell eggs, cooked vegetables, and meat). The intent of this ordinance is to allow freedom from those regulations in face-to-face transactions, which is why the element of community is so important. If a farmer friend invites you and your family to share a meal, would you be concerned about the on-farm slaughtered lamb or the raw milk cheese served?

7) What about food safety?

- Actually, local food is safer than food from industrial agriculture. Almost all food-borne illness is caused by problems in the supply chain, in which food is shipped long distances, mixed with foods from numerous sources, processed by many hands, and again shipped long distances. Direct, face-to-face sales create a supply chain with a single link. A local farmer, selling to friends and neighbors, is far more concerned about his or her customers than is an industrial farmer and most likely would not sell anything he or she would not eat themselves.
- There are very small numbers of illness from local food, especially when compared to the statistics for processed and pasteurized foods. On the other hand, we have seen numerous recalls of, and several deaths attributed to, industrial food.

8) Does the ordinance give unlicensed Producers and Processors an unfair advantage?

- Actually, licensed Producers and Processors have the advantage. They have many more outlets for sales of their food such as farmers' markets, retail stores (local coops, convenience stores, and supermarkets), restaurants, and public institutions (schools, hospitals, and other service centers). Under the ordinance, unlicensed Producers and Processors have only direct sales to rely on—and this is the intent.

9) Where can Producers and Processors sell their food?

- A sale and delivery may take place at a farm, ranch, home, office, or any location agreed to between the Producers and Processors and the Patron.

10) Why does the Liberty ordinance not include farmers' markets?

- The author of the Liberty ordinance did not include farmers' markets as a selling venue because the strength of the ordinance is its reliance on the element of trust that exists between known sellers and buyers. While it is true that most farmers' market customers are local and know the sellers, and that a sign at the booth may inform an unfamiliar buyer that the product has been produced in an unlicensed facility and has not been inspected, the element of community familiarity is compromised. In addition, as the intent of the ordinance is to promote local, community food ways, farmers' markets encourage sales beyond that sphere and could provoke the DACF...

11) How does the ordinance affect liability for local food products?

- The ordinance offers no liability protection for the Producer or Processor. In some cases, Producers have required Patrons to enter into agreements that state that the Patron understands the benefits and risks of the purchase.